

**From:** Jennings, Jannine  
**Sent:** Wednesday, February 12, 2014 7:44 AM  
**To:** Raver, Alexandra  
**Cc:** Jennings, Jannine; Rochlin, Kevin; Ouk, Chantha  
**Subject:** Request for Deviation from 40 CFR §35.6275, Allowance of Pre-Award Costs  
**Attachments:** Memorandum\_Jennings 2.11.14.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Alexandra

Attached please find a request for deviation for 40 CFR 35.6275, Allowance of Pre-Award Costs for CERCLA Cooperative Agreement to the Shoshone-Bannock Tribes for work at the Eastern Michaud Flats Superfund Site, Pocatello, Idaho.

This request is for consideration of Denise Polk and has been provided to you per instructions in your email of August 5, 2013. Please contact me if you have any questions.

Jannine

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OFFICE OF  
ENVIRONMENTAL  
CLEANUP

**FEB 11 2014**

**MEMORANDUM**

**SUBJECT:** Request for Deviation from 40 CFR §35.6275, Allowance of Pre-Award Costs;  
New Eastern Michaud Flats (EMF) Superfund Site Remedial Response Cooperative  
Agreements # V-00J82701-0, V-00J82801-0 and V-00J82901-0 to Shoshone Bannock  
Tribes

**FROM:** Jannine Jennings and Kevin Rochlin, Remedial Program Managers  
Superfund Site Cleanup Unit #1  
Remedial Cleanup Program

**THRU:** Edward H. Chu, Assistant Regional Administrator  
EPA Region 10

**TO:** Denise Polk, Director  
National Policy Training and Compliance Division  
Office of Grants and Debarment

**Purpose**

The purpose of this memorandum is to request deviation from the requirements of 40 CFR §35.6275 (Period of Availability of Funds) for the subject cooperative agreements with the Shoshone-Bannock Tribes (Tribes). A deviation would allow costs to be incurred by the Tribes on these cooperative agreements as of January 1, 2014, the start date in the subject work plans, which is prior to the agreements' award dates.

**Site Background**

The Eastern Michaud Flats (EMF) Superfund Site was listed on the NPL in 1990, is located northwest of Pocatello, Idaho and is approximately 2,530 acres in size. The FMC Corporation and the J.R. Simplot Company started processing phosphate ore at the Site during the 1940's. The primary site contaminants of concern (COCs) include elemental phosphorus, radionuclides, and metals in soils, and arsenic and total phosphorus in groundwater.

The EMF site consists of 3 operable units (OUs). The FMC OU is the location of the former FMC Corporation facility that processed phosphate ore into elemental phosphorus until it closed in 2001. The Simplot OU is the location of the current J.R. Simplot Company's Don Plant facility and produces fertilizer and other phosphorus ore by-products. The Off-Plant OU is comprised of the area surrounding the above OUs impacted by the operations at those facilities. Interim Amendments to the Record of Decision were issued in 2010 and 2013 for the Simplot and FMC OUs, respectively. Remedial design



and remedial actions are currently ongoing at both OUs. Investigations into the nature and extent of contamination in the Off-Plant OU continue.

The majority of the FMC OU and part of the Off-Plant OU are located within the boundaries of the Shoshone-Bannock Tribes' Fort Hall Indian Reservation and the Simplot OU is directly adjacent to the Reservation boundary. As such, the Tribes have had a key role throughout the CERCLA process and continue to provide valuable input into the review and oversight of actions at the entire EMF Site. Important remedial design and remedial actions are currently ongoing at both the FMC and Simplot OUs and the EPA needs to consider the Tribes' comments and perspectives as part of our oversight activities. To delay the development of those comments could have negative impacts on our ability to provide timely review of key PRP documents.

### **The New Cooperative Agreements**

The EPA is in the process of issuing three new cooperative agreements to the Tribes, one for each OU (consistent with the separate funding for each OU). The basic scope of each of the subject new cooperative agreements is the same - to provide funds to the Tribes to review and oversee CERCLA activities at each OU at the Site. In addition, the agreements address outreach efforts by the Tribes to the local Tribal community (both elected and the general public) that are aimed towards keeping the community updated on activities at the Site.

The Tribes currently receive copies of all Site documents and are provided an opportunity to provide review comments to the EPA. The EPA considers the comments when preparing EPA's response and, as appropriate, forwards those comments to the PRPs. The New Cooperative Agreements provide funding for the Tribes to provide review and comment on these documents and also to directly participate in oversight activities such as field work. Timely input from the Tribes is an important part of this process.

Each month the Tribal program staff meets with the Fort Hall Business Council and the Land Use Policy Commissioners to provide updates on Site progress. Regular updates of the Tribal policy makers are important since these actions potentially impact reservation and Treaty-reserved resources of the Tribe. Tribal staff funded by these cooperative agreements also attends regularly scheduled monthly meetings of the five districts on the Reservation. These meetings provide a forum to update tribal members regarding environmental and other issues impacting their resources.

### **Delays in Award of New Cooperative Agreements**

During the fall of 2013, several meetings were held between the Tribes and the EPA to negotiate the work plans for the new cooperative agreements. Agreement on the final work plans and budgets was reached in late December. Due to the holidays, Tribal processing time and work required to conduct ongoing document review and outreach activities covered by these cooperative agreements, the Tribes were unable to submit the formal application packages until January 15, 2014. Award documents were then prepared by the EPA staff and the funding recommendation processed. Due to the length of these processes, the award will not be finalized until early February.

### **Request for Approval of Pre-Award Costs**

The EPA Region 10 and the Shoshone-Bannock Tribes request that the costs incurred on these cooperative agreements be allowed as of January 1, 2014. The scope of work to be conducted under these agreements was negotiated prior to this point and the Tribes' began incurring costs on work

included under the scope of these agreements as of that date. As stated earlier, the Tribes felt compelled to initiate this work in order to provide appropriate input to the EPA regarding on-going Site activities and to provide updates of Site activities to the Tribal community and Tribal Council. The unanticipated delays by the Tribes and the EPA in award of this agreement were unfortunate, but had the new cooperative agreements been in place, the EPA would have approved the pre-award work and associated costs by the Tribes. This work was and is vital to the success of the ongoing remediation at the Site.

cc: Laurice Jones, EPA HQ, NPTCD  
Alexandra Raver, EPA HQ, NPTCD  
Kathy Tsing-Choy, EPA Region 10, Grants Specialist



